

Message Text

LIMITED OFFICIAL USE

PAGE 01 BRASIL 06063 01 OF 02 031057Z
ACTION TRSE-00

INFO OCT-01 ARA-10 ISO-00 L-03 EB-08 /022 W
-----072042 031103Z /11

R 022120Z AUG 78
FM AMEMBASSY BRASILIA
TO SECSTATE WASHDC 8511

LIMITED OFFICIAL USE BRASILIA SECTION 1 OF 2 6063

PASS TREASURY

EO 11652: N/A
TAGS: ETRD, BR
SUBJ: BILATERAL TAX TREATY TALKS

REF: A. BRASILIA 5867 B) LOHMANN-ROESENBLUM TELECON, 02 AUG 78

1. WE HAVE CONFIRMED TO DORNELLES THAT TREASURY ACCEPTS HIS PROPOSAL TO CALL ON ROSENBLUM IN WASHINGTON AUG 14-16 (REF B). HE ALSO EXPRESSED APPRECIATION FOR TREASURY ADJUSTING TO HIS HEAVY SCHEDULE BY POSTPONING UNTIL SEP OR OCT (TENTATIVE DATES TO BE DISCUSSED IN WASHINGTON) THE MEETINGS PREVIOUSLY SCHEDULED FOR AUG 22-25 IN BRASILIA (REF A).

2. IN ANTICIPATION OF THE INFORMAL MEETING NOW PLANNED FOR MID-AUGUST IN WASHINGTON, DORNELLES ASKED THAT THE EMBASSY TRANSMIT THE FOLLOWING GOB PRELIMINARY COMMENTS AND QUESTIONS ON THE DRAFT BILATERAL TAX CONVENTION:

QUOTE

A. SPECIAL ATTENTION SHOULD BE GIVEN TO ARTICLE 13 (CAPITAL GAINS), 14 (INDEPENDENT PERSONAL SERVICES) AND 15 (DEPENDENT PERSONAL SERVICES) THEREOF.

B. AS PRESENTED BELOW WE FEEL THAT SOME ARTICLES SHOULD PREFERABLY BE WORDED ALONG LINES WITH THE BRAZIL/ITALY DRAFT AS INITIALLED CONVENTION AS PREVIOUSLY PROPOSED BY BRAZILIAN

LIMITED OFFICIAL USE

PAGE 02 BRASIL 06063 01 OF 02 031057Z

GOVERNMENT.

C. SUBJECT TO ADDITIONAL REMARKS TO BE MADE DURING THE FORTHCOMING NEGOTIATIONS, THE FOLLOWING CLARIFICATIONS ARE NEEDED:

(1) ARTICLE 2, ITEM 2, SUB-ITEM A (LINES 3 TO 5) - REASON FOR THE EXCLUSION OF THE "ACCUMULATED EARNING TAX" AND "THE PERSONAL HOLDING COMPANY TAX" OF THE FIELD OF APPLICATION OF THE CONVENTION.

(2) ARTICLE 3, ITEM 1, SUB-ITEM A (LINE 2) - HOW "AN ESTATE"
AND "A TRUST" IS TAXED IN USA?

(3) ARTICLE 3, ITEM 1, SUB-ITEM F (LINES 2 TO 4) - ARE THERE
ANY SPECIAL REASONS FOR THE EXCLUSION OF PUERTO RICO, THE VIRGIN
ISLANDS, GUAM, ETC.?

(4) ARTICLE 3 ITEM 2 - REASON FOR THE INCLUSION OF REFERENCES
TO THE MUTUAL AGREEMENT PROCEDURE.

(5) ARTICLE 4, ITEM 1 - WILL A PARTNERSHIP ORGANIZED UNDER THE
LAWS OF BRAZIL AND WHOLLY-OWNED BY CITIZENS OF THE UNITED STATES
BE SUBJECT TO UNITED STATE TAX UNDER THE CONVENTIONS? BEING SO,
WILL THE TAX DEFERRAL BE GRANTED?

(6) ARTICLE 4, ITEM 3 - PLEASE EXPLAIN THE REASONS FOR EXCLUDING
A COMPANY WHICH IS A RESIDENT OF BOTH CONTRACTING STATES OUT
OF THE SCOPE OF THE CONVENTION.

(7) ARTICLE 4 ITEM 5 - INTERPRETATION OF AND DETAILED COMMENTS
ON THIS ITEM WOULD BE APPRECIATED.

(8) ARTICLE 5, ITEM 2 - DELETION OF SUB-ITEMS NOT CONTAINED
IN OECD MODEL. SPECIALLY SUB-ITEMS J AND K WOULD NOT BE ACCEPTED.

(9) ARTICLE 7N ITEM 7 - COMMENTS ON THE DEFINITION OF
"BUSINESS PROFITS" AND PARTICULARLY ON THE EXPRESSION "CONDUCT
OF ANY TRADE OR BUSINESS" WOULD BE APPRECIATED.

(10) ARTICLE 8, ITEM 2 AND 3 - REASONS FOR THE INSERTION OF THESE
ITEMS.

(11) ARTICLE 9 - COMMENTS ON SUBSTANTIAL DIFFERENCES BETWEEN
THE PROPOSED WORDING FOR THIS ARTICLE AND CORRESPONDING
PROVISIONS OF THE OECD MODEL.

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 BRASIL 06063 01 OF 02 031057Z

(12) ARTICLE 10, ITEM 5 - CLARIFICATIONS ON THIS ITEM.

(13) ARTICLE 11 - ITEM 1 - WHICH WOULD BE THE PRACTICAL
CONSEQUENCES OF THE INSERTION OF "BENEFICIAL OWNER" IN THIS
ITEM?

LIMITED OFFICIAL USE

NNN

LIMITED OFFICIAL USE

PAGE 01 BRASIL 06063 02 OF 02 031039Z
ACTION TRSE-00

INFO OCT-01 ARA-10 ISO-00 EB-08 L-03 /022 W
-----071810 031102Z /11
R 022120Z AUG 78
FM AMEMBASSY BRASILIA

TO SECSTATE WASHDC 8512

LIMITED OFFICIAL USE SECTION 2 OF 2 BRASILIA 6063

PASS TREASURY

- (14) ARTICLE 11, ITEM 3, SUBJ-ITEM B - IN PRINCIPLE, IT IS UNACCEPTABLE.
- (15) ARTICLE 12, ITEM 1 - SEE QUESTION RELATED TO ARTICLE 11, ITEM 1 ABOVE.
- (16) ARTICLE 12, ITEM 3 - COMMENTS ON THE LAST SENTENCE OF THE DEFINITION ARE NEEDED.
- (17) ARTICLE 12, ITEM 6 - PERMANANT ESTABLISHMENT HAS NOT BEEN INCLUDED IN THE CONCEPT OF SOURCE OF THE ROYALTIES. PLEASE COMMENT SECOND PART OF THIS ITEM.
- (18) ARTICLE 13, ITEMS 4 AND 5 - BOTH ARE UNACCEPTABLE AS WORDED IN THE VERSION PROPOSED BY UNITED STATES. WE PREFER TO STICK TO THE WORDING OF THE BRAZIL/ITALY TEXT.
- (19) ARTICLE 14 - IN CONVENTIONS SIGNED BY UNITED STATES DOES THIS ARTICLE DEAL WITH INCOME DERIVED BY AN INDIVIDUAL ONLY? ANYHOW, BRAZIL IS WILLING TO INCLUDE THE WORDING OF SAME ARTICLE OF BRAZIL/ITALY TEXT.
- (20) ARTICLE 14, ITEM 2, SUB ITEM A - IS THE PROVISION UNDER THIS SUB-ITEM CUMULATED OR ALTERNATIVE WITH THOSE UNDER SUB-ITEMS B AND C ?
- (21) ARTICLE 15A - WE ARE ONLY PREPARED TO FOLLOW THE CORRESPONDING LANGUAGE OF BRAZIL/ITALY TEXT.
- (22) ARTICLE 17, ITEM 1 - FROM LINE 8 TO THE END - THE PROPOSED LANGUAGE IS UNACCEPTABLE.
- (23) ARTICLE 17, ITEM 2 - SOME INTERPRETATIONS OF AND COMMENTS
- LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 BRASIL 06063 02 OF 02 031039Z

- ON THE SENTENCE BEGINNING WITH "FOR PURPOSES OF" ARE NECESSARY.
- (24) ARTICLES 18 AND 19 - BRAZIL CONSIDERS AS PREFERABLE THE CORRESPONDING VERSION OF THE ITALIAN TEXT FOR BOTH ARTICLES. IN ANY CASE ADDITIONAL CLARIFICATIONS WILL BE NEEDED AS TO THE DURATION OF PAST EMPLOYMENT IN THE STATE OF SOURCE REGARDING THE PROVISIONS OF ARTICLE 18 ABOUT PENSIONS AND ANNUITIES (ITEMS 1 AND 2).
- (25) ARTICLE 20N ITEM 3 - COMMENTS ON THIS ITEM PARTICULARLY AS TO THE MEANING OF THE EXPRESSION "FIRST-MENTIONED STATE" IN RELATION TO TRAINEES ARE NEEDED.
- (26) ARTICLE 22 - COMMENTS ON THIS ARTICLE ARE EQUALLY NEEDED.
- (27) ARTICLE 23, ITEM 3 SUB-ITEM D - PRACTICAL EXAMPLES ON THE EXCEPTION PROVIDED FOR IN THIS SUB-ITEM WOULD BE USEFUL.
- (28) ARTICLE 24, ITEM 3 - BRAZIL IS NOT PREPARED TO ACCEPT.
- (29) ARTICLE 25 AND 26 - IN CONVENTIONS SIGNED BY THE UNITED STATES IS THE LANGUAGE FOR THESE ARTICLES ALWAYS THE SAME OR HAS THE CORRESPONDING OECD MODEL'S LANGUAGE BEEN INCLUDED IN

SOME OF SUCH CONVENTIONS? END QUOTE.

3. FINATT WILL DELIVER COPIES OF HARVARD LAW JOURNAL WITH TAX
TREATY ARTICLES TO DORNELLES IN BRASILIA AND PINTO IN RIO.
SAYRE

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TAX AGREEMENTS, NEGOTIATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 02 aug 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978BRASIL06063
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780318-0034
Format: TEL
From: BRASILIA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t197808104/aaaadjgv.tel
Line Count: 175
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 47230358-c288-dd11-92da-001cc4696bcc
Office: ACTION TRSE
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 78 BRASILIA 5867
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 05 may 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1552653
Secure: OPEN
Status: NATIVE
Subject: BILATERAL TAX TREATY TALKS
TAGS: ETRD, BR, US
To: STATE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/47230358-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014